

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PRINCE E. WALLACE and DEPARTMENT OF THE NAVY,
NAVAL AVIATION DEPOT, Norfolk, VA

*Docket No. 00-1753; Submitted on the Record;
Issued April 30, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's wage-loss compensation on the basis that he was no longer disabled from performing his date-of-injury job; and (2) whether the Office properly denied appellant's request for a hearing.

On July 10, 1996 appellant, then a 49-year-old electroplater, sustained a lumbosacral strain and herniated nucleus pulposus at L5-S1 while in the performance of duty. Appellant ceased working on July 12, 1996. The Office placed appellant on the periodic compensation rolls¹ and he continued to receive appropriate wage-loss compensation through August 6, 1998, at which point the Office issued a decision terminating compensation on the basis that appellant was able to resume his date-of-injury job.

Appellant sought reconsideration on three occasions. In each instance, the Office denied modification of its prior decision terminating compensation. The Office issued its most recent decision denying modification on January 21, 2000. Appellant requested a hearing following the Office's on January 21, 2000 denial of modification. By decision dated March 17, 2000, the Office denied appellant's request for a hearing on the basis that he had previously requested reconsideration.

The Board finds that the Office failed to meet its burden of proof in terminating appellant's compensation.

¹ Approximately two months prior to his July 1996 employment injury, the employing establishment notified appellant of a forthcoming reduction-in-force. In accordance with this prior notification, the employing establishment terminated appellant effective September 28, 1996. Appellant, however, continued to receive his regular weekly salary for a period of 33 weeks following his termination. The Office placed appellant on the periodic compensation rolls in May 1997 after his entitlement to severance pay expired.

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.² Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.³

Under the Federal Employees' Compensation Act⁴ the term disability is defined as the incapacity because of an injury in employment to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.

In the present case, the Office terminated appellant's compensation after determining that he was capable of resuming his prior duties as an electroplater. The Office relied primarily on the opinion of appellant's treating physician, Dr. David L. Durica, a Board-certified orthopedic surgeon. An Office rehabilitation counselor prepared a job description for the position of electroplater and forwarded a copy to Dr. Durica for his assessment of whether appellant was capable of performing the described duties. On October 7, 1997 Dr. Durica approved the electroplater position without modification. Based on Dr. Durica's opinion that appellant was capable of performing the duties of an electroplater, the Office found that appellant was able to perform his date-of-injury job and, therefore, terminated appellant's compensation.

On reconsideration appellant argued that the position description Dr. Durica approved on October 7, 1997 did not accurately reflect his prior duties as an electroplater. The job description prepared by the Office rehabilitation counselor was based upon information obtained from the *Dictionary of Occupational Titles*. Although the record includes a copy of appellant's official position description obtained from the employing establishment, the Office apparently did not provide Dr. Durica a copy of appellant's official position description.

Upon reviewing the two job descriptions, the Board notes there are discrepancies with respect to the physical demands of the position of electroplater. Of particular significance is the fact that the electroplater position Dr. Durica approved on October 7, 1997 does not entail any bending, climbing, crouching or stooping. In contrast, appellant's official position description provides that the employee "May be required to remain standing or sitting for long intervals, to lift, push, pull, *climb, bend, crouch, stoop*, assume strained or awkward work positions ... work in confined areas, or from high level work stands or platforms." Additionally, a question exists with respect to the amount of time appellant would be required to sit or stand during the course of a workday. While the official position description indicates "long intervals" of standing or sitting, the job description the Office's rehabilitation counselor provided Dr. Durica indicates a sitting requirement of 0 to 33 percent of the workday and a standing requirement of 33 to 66 percent of the workday. Although the Office reviewed both position descriptions, the Office appears to have focused its attention exclusively on the comparable lifting requirements set forth

² *Curtis Hall*, 45 ECAB 316 (1994).

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ 5 U.S.C. § 8102.

in both the official position description and the *Dictionary of Occupational Titles*. The Office neither acknowledged nor attempted to reconcile any of the above-noted discrepancies.

Based on the foregoing analysis, it is apparent that Dr. Durcia authorized appellant to return to an electroplater position that was not entirely consistent with the physical demands of his date-of-injury job. The March 1997 functional capacity evaluation he relied upon in determining appellant's physical abilities noted restrictions with respect to lifting, pushing, bending, crouching, sitting and standing. While the position approved by Dr. Durcia on October 7, 1997 may closely approximate the lifting restrictions imposed on appellant, the position description does not adequately address appellant's noted limitations with respect to standing, sitting, crouching and bending. Inasmuch as he was not provided with accurate information regarding the nature and extent of appellant's duties as an electroplater, the Office erred in relying upon his opinion as a basis for concluding that appellant was no longer disabled from performing his date-of-injury job.⁵ Accordingly, the Office failed to meet its burden to justify termination of compensation.

The January 21, 2000 decision of the Office of Workers' Compensation Programs is hereby reversed.⁶

Dated, Washington, DC
April 30, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁵ In a subsequent report dated August 6, 1999, Dr. Durcia explained that he reviewed an electroplater job description prepared by the U.S. Civil Service Commission and that this position description was inconsistent with the one he reviewed in October 1997. He further indicated that appellant's physical restrictions would not allow him to perform the duties of an electroplater as described by the U.S. Civil Service Commission. It is noted that appellant's official position description references the same document Dr. Durcia later reviewed (WG-3711, TS-24 May 1973) as the standard used in classifying appellant's date-of-injury job.

⁶ In view of the Board's disposition of the claim on the merits, the issue of whether the Office properly denied appellant's February 2, 2000 request for a hearing is moot.